

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5427 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

ISHWARLAL P PATEL

Versus

EX-OFFICO SECRETARY

Appearance:

Shri M.I.Hava, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondent.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 12/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat on 14th June 1986 under Section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Ceiling Act

for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (the respondent herein) on 19th March 1986 in Appeal No. Surat-18 of 1985 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, the Competent Authority at Surat declared the holding of one Bikiben widow of Baojibhai Patel (the deceased for convenience) to be in excess of the ceiling limit by 20151 square metres.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed her declaration in the prescribed form under Section 6 (1) of the Ceiling Act. It was duly processed by the Competent Authority at Surat. After observing necessary formalities under Section 8 of the Act, by his order passed on 14th June 1984 under sub-section (4) thereof, the Competent Authority at Surat declared the holding of the deceased to be in excess of the ceiling limit by 20151 square metres. Its copy is at Annexure-C to this petition. The deceased carried the matter in appeal before the respondent under Section 33 of the Ceiling Act. It came to be registered as Appeal No. Surat-18 of 1985. By the order passed on 19th March 1986, the respondent dismissed it on the ground of default of appearance. Its copy is at Annexure-D to this petition. It appears that the deceased breathed her last thereafter leaving behind her the present petitioner as her heir and legal representative. It appears that the disposal of the appeal was not brought to the notice of the deceased or the present petitioner by her learned Advocate. When the petitioner came to know of the appellate order at Annexure-D to this petition, he was aggrieved thereby. He has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-C to this petition as affirmed in appeal by the appellate order at Annexure-D to this petition.

3. As transpiring from the appellate order at Annexure-D to this petition, the appeal from the deceased was dismissed for default of appearance. The respondent could not have done so in view of the ruling of this court in the case of SHIVLAL THAKERSHI GOTECHA v. COMPETENT AUTHORITY reported in 1987 (1) 28 (1) Gujarat Law Reporter at page 267. It has clearly been held therein that the appellate authority under Section 33 of the Act has no power to dismiss an appeal for default of appearance.

4. Sitting as a single Judge, the aforesaid ruling

of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case. The impugned appellate order at Annexure-D to this petition cannot be sustained in law on this ground alone.

5. Ordinarily, after finding that the appellate order at Annexure-D to this petition cannot be sustained in law, the matter will have to be remanded to the respondent for restoration of the appeal to file and for its fresh decision according to law. It is however not required to be done in this case for the simple reason that learned Advocate Shri Hava for the petitioner has pressed into service the binding ruling of the Supreme Court in the case of ATIA MOHAMMADI BEGUM v. STATE OF UTTAR PRADESH reported in AIR 1993 Supreme Court at page 2465. It has been urged by learned Advocate Shri Hava for the petitioner that the lands involved in the declaration of the deceased were agricultural lands and they were actually used for agricultural purposes on the date of commencement of the Ceiling Act and there was no master plan in existence answering its definition contained in Section 2 (h) of the Ceiling Act. As against this, learned Assistant Government Pleader Shri Sompura for the respondent has urged that it would require investigation into facts whether or not agricultural operations were, in fact, carried on in the lands in question on the date of commencement of the Ceiling Act and whether or not any master plan answering its definition contained in Section 2 (h) thereof was in existence. This factual position deserves better to be inquired by the concerned Competent Authority rather than by the respondent as the appellate authority. I have therefore thought it fit to remand the matter to the Competent Authority at Surat rather than the respondent as the appellate authority.

6. It transpires from the order at Annexure-C to this petition that it was brought to the notice of the Competent Authority at Surat that some portion of the lands shown in the holding of the deceased were acquired under the Land Acquisition Act, 1898 (the Acquisition Act for brief). It cannot be gainsaid that the proceeding before the concerned Competent Authority would be inquisitorial in nature. When it is brought to the notice of the concerned Competent Authority that lands have been acquired under the Acquisition Act, he may take judicial notice of such acquisition as acquisition of land is by notification under Section 4 of the Acquisition Act and such notification is required to be published in the Official Gazette meaning thereby the

Government Gazette. I am fortified in my view by the binding ruling of the Supreme Court in the case of UNION OF INDIA v. NIHAR KANTA reported in AIR 1987 Supreme Court at page 1713. It has been held therein that courts should take judicial notice of notifications published in the Government Gazette. In that case, the notification under Section 4 of the West Bengal Estate Acquisition Act was published in the Official gazette. In that context, it has been held by the Supreme Court that a judicial notice of the notification published in the Government Gazette has to be taken by courts.

7. By analogy, the aforesaid binding ruling of the Supreme Court will be applicable in the instant case. It cannot be gainsaid that the Competent Authority under Section 8 (4) of the Ceiling Act exercises a quasi-judicial function. Such quasi-judicial function imposes a duty on the authority exercising such function to act judicially according to well-settled principles of law. When an authority is required to act judicially, he has to keep in mind principles governing judicial proceedings even if certain procedural law is not strictly applicable in the proceedings. Such quasi-judicial authority may not have strictly to adhere to the relevant provisions contained in the Indian Evidence Act, 1872 (the Evidence Act for brief). Such quasi-judicial authority however cannot ignore basic principles of the law of evidence. In that context, the aforesaid binding ruling of the Supreme Court requiring courts to take judicial notice of notifications published in the Government Gazette under Section 57 of the Evidence Act will have to be followed. I am therefore of the opinion that, if and when acquisition of some land shown in the declaration under Section 6 (1) of the Ceiling Act is brought to the notice of the concerned Competent Authority, he may take judicial notice of the Government Gazette involving publication of the notification under Section 4 of the Acquisition Act.

8. Besides, Section 81 of the Evidence Act raises a presumption about genuineness of a notification published in the Government Gazette. In that view of the matter and in view of the fact that the concerned Competent Authority would exercise inquisitorial nature of jurisdiction while processing the form under Section 8 of the Ceiling Act, he is bound to take notice of the notification under Section 4 of the Acquisition Act published in the Government Gazette. He need not then insist on proof of acquisition to be furnished by the landholder if it is shown that the land is under acquisition by means of a notification under Section 4 of

the Acquisition Act. It would be sufficient for the landholder only to point out the date of the notification under Section 4 thereof. // It appears that certain consequential actions by issuing the notifications under Section 10 of the Ceiling Act have ensued the impugned orders at Annexures-C and D to this petition. They have also to be quashed and set aside.

9. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-C and D to this petition will have to be quashed and set aside. The matter will have to be remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of come. It will be open to the petitioner herein to bring to the notice of the Competent Authority at Surat the date of the notification published under Section 4 of the Acquisition Act qua the lands held by the deceased as shown in her declaration under Section 6 (1) of the Ceiling Act. It would be desirable on the part of the petitioner to produce a copy of the relevant gazetted notification for the purpose.

10. In the result, this petition is accepted. The order passed by the Competent Authority at Surat on 14th June 1984 at Annexure-C to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 19th March 1986 in Appeal No. Surat-18 of 1985 at Annexure-D to this petition is quashed and set aside. As also are set aside the notifications issued under the relevant provisions contained in Section 10 of the Ceiling Act. The matter is remanded to the Competent Authority at Surat for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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